

INTERNAL REVENUE SERVICE

Department of the Treasury

District
Director

Person to Contact: [REDACTED]
Telephone Number: [REDACTED]
Refer Reply to:
Internal Revenue Service
[REDACTED]

CERTIFIED

Date: AUG 12 1992

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under section 501(c)(3) of the Internal Revenue Code of 1936.

The information submitted discloses that your trust was established on [REDACTED], by [REDACTED] and [REDACTED] in the State of [REDACTED].

The following purpose appears in you trust agreement:

The purpose of this trust is to hold and administer the trust estate, which shall include the real estate described in Exhibit A, attached, which real estate is to be held and administered as a nature conservation area, with emphasis on restoration and maintenance as prairie and special emphasis on prairie wild flowers and use of the land as a prairie wildlife preserve, for those parts of the area that are not in forest use.

The primary activity of your organization is to hold real estate in trust to be used as a prairie wildlife preserve. Visitors and groups can take a self-guided tour of the property, with the permission of the trustee/donor [REDACTED]. No fee is charged. Future projects include a viewing platform, planting of more native woodland plants, and making available to the public an extensive natural history library.

The organization's primary source of financial support will come from friends and family. The expenses will include labor costs, supplies (seeds, chemicals, fuel, plants), equipment and repairs on the existing buildings.

A quitclaim deed was signed on [REDACTED] between [REDACTED] and [REDACTED]; and [REDACTED] and [REDACTED] as trustees for [REDACTED]. Payment was [REDACTED] dollars and other good and valuable consideration. The property contains [REDACTED] acres and is valued at [REDACTED].

The property was previously a farm that was converted into a wildlife preserve. The old fescue fields were converted into prairie grass and forbs. Also [REDACTED] ponds have been put on the property. The property includes a 3 bedroom wood frame house and 3 "out buildings" (a garage, a tool shed, and a large porch).

According to the trust agreement (Article III) the trustees shall have the power to lease any dwelling on the real estate and to lease any land, on a long term basis to permit one or more of grantors' children to live in a dwelling upon the land that is subject to this trust. Any such rental of land or of the existing dwelling on said real estate shall be for a fair rental paid by the tenants, with such other arrangements as maintenance, payment of taxes, insurance and other terms of the lease arrangement as the trustees may deem appropriate. Additionally, so long as grantors choose to live in the dwelling that is on the real property that is part of the trust estate, they shall not be required to pay any rental for their use and occupancy of said dwelling and the accompanying yard, appurtenances and improvements. The trust also states that the trustees have the right to execute all instruments necessary to effect the authority herein granted; manage real estate and personal property with all the rights, privileges and powers, although not specifically mentioned herein, as if individually and absolutely owned by trustees, consistent with the purposes of this trust.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

████████████████████

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(b) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals...."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

In Hofer v. U.S., 64 CL CT. 672 (1928) the Court of Claims ruled that where the property and income of a religious community was held for the common use and benefit of its members to be used for their support and maintenance (and the support and maintenance of the heirs of deceased members), there was inurement of net earnings to the benefit of private shareholders or individuals.

Your organization is operated for the private benefit of the trustee/donor ██████████, and her descendants. Though the deed to the property was transferred to ██████████, the ██████████ family continues to maintain control over the property as if it belonged to an individual. The trustee/donor presently lives on the property rent free and all family members have the right to rent the structures and land. Thus your organization serves private rather than public interests and is outside the scope of exempt status under Section 501(c)(3) of the Code.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of Section 501(c)(3).

[REDACTED]

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this proposed determination in timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,

[REDACTED]

District Director

Enclosures:
Publication 892
Form 6018